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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,317	01/23/2004	Eckhard K. Friedrich	23644.00	4637

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EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

MAIL DATE	DELIVERY MODE
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06/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/762,317	Applicant(s) FRIEDRICH ET AL.	
	Examiner MONZER R. CHORBAJI	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/23/04:9/9/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This non-final is in response to the election/restriction requirement received on 05/02/2007

Election/Restrictions

1. Applicant's election with traverse of a candle in the reply filed on 05/02/2007 is acknowledged. The traversal is on the ground(s) that Applicant is entitled to a reasonable number of related embodiments falling within the scope of a generic inventive concept and that a search and examination of the entire application is not a serious burden on the examiner since the multiple embodiments claimed fall within a common field of search. This is not found persuasive because the multiple embodiments claimed fall into completely separate classes of search and evaluation where a substantial burden is placed on the examiner. For example, as explained on page 2 of the election/restriction requirement sent on 04/05/2004, search for the claims drawn to a candle are in classes 44, 431, D26, 424, 122, 222, 239 and 422 whereas search for the claims drawn to displaying and selling candles are in classes 434, D14, 40, 229, 312 and D20. Clearly, this is a serious burden on the examiner to search. Moreover, the related embodiments are unreasonable due to the extensive search required in completely unrelated classes. Therefore, the requirement is still deemed proper and is therefore made FINAL.
2. Claims 14-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05/02/2007.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4-9 and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Frandsen (U.S.P.N. 6,036,477).

Regarding claims 1 and 19, Frandsen discloses the following: a wax candle body (figure 1:12) having a top (unlabeled top surface located between 12 and 13 in figure 1) and a bottom (figure 1:15), at least one reservoir defined in said wax candle body (figure 1:14 and col.4, lines 10-15), the reservoir having an open top end (figure 1:16), a closed bottom end (unlabeled inner side of bottom wall 15 in figure 1), and a hollow interior (unlabeled inner volume of cavity 14 in figure 1). Furthermore, Frandsen's reservoir is capable of holding scenting material.

Regarding claims 2, 4-9 and 20-23, Frandsen discloses the following: reservoir extends from the top of the wax candle body down to its bottom (figure 1:14), candlewick is disposed within the wax candle body (figure 1:20) where reservoir 14 in figure 1 is capable of having a wick that runs from the top down to its bottom and Frandsen's reservoir is capable of holding various different types of scenting material.

Conclusion


Art Unit: 1744

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRC



GLADYS JP CORCORAN
SUPERVISORY PATENT EXAMINER